

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

GEORGE HARRIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:23-cv-00287-AGF
	)	
MARTIN O'MALLEY, <sup>1</sup>	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's application for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff is the prevailing party in this action challenging the decision of Defendant that Plaintiff is not disabled. Final judgment was entered on May 6, 2024, and Plaintiff filed the current motion for fees on July 29, 2024. Plaintiff seeks \$4,533.62 in attorney's fees. Plaintiff asks that the fees be paid to Plaintiff's counsel, pursuant to an assignment of fees executed by Plaintiff.

Defendant does not object to an award of fees in the amount sought but asserts that, pursuant to *Astrue v. Ratliff*, 560 U.S. 586 (2010), the award should be paid directly to Plaintiff and may be subject to offset to satisfy any pre-existing debt that the litigant owes to the United States.

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<sup>1</sup> Martin J. O'Malley is now the Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, he is substituted for Acting Commissioner Kilolo Kijakazi as the Defendant in this suit.


Although Plaintiff's motion for fees is untimely, having been filed more than 30 days after entry of final judgment, 28 U.S.C. § 2412(d)(1)(B), Defendant has waived any such objection to the motion. *See Hickman v. Berryhill*, No. 3:17-CV-00050 BSM, 2018 WL 625103, at \*1 (E.D. Ark. Jan. 30, 2018) (holding that the timing requirement of § 2412(d)(1)(B) is not jurisdictional and had been waived by the Social Security Administration); *Vasquez v. Barnhart*, 459 F. Supp.2d 835, 836-37 (N.D. Iowa 2006) (same).

The Court's review of the record indicates that Plaintiff is entitled to an award of fees, and that the amount sought is reasonable and properly supported. As Defendant asserts, *Astrue v. Ratliff*, 560 U.S. 586 (2010), requires that the fees be paid directly to Plaintiff, regardless of the assignment signed by Plaintiff.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's application for attorney's fees in the amount of \$4,533.62 is **GRANTED**. ECF No. 21.

**IT IS FURTHER ORDERED** that said award shall be made payable to Plaintiff, and shall be paid by the Social Security Administration.

  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated on this 6th day of August, 2024